

**EXPEDITED PROCEDURE – EXAMINING GROUP 2152**

**S/N 09/884,674**

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Jim Chu et al.	Examiner:	Philip C Lee
Serial No.:	09/884,674	Group Art Unit:	2152
Filed:	June 19, 2001	Docket No.:	884.441US1
Title:	SYSTEM AND METHOD FOR AUTOMATIC AND ADAPTIVE USE OF ACTIVE NETWORK PERFORMANCE MEASUREMENT TECHNIQUES TO FIND THE FASTEST SOURCE		
Assignee:	Intel Corporation	Customer Number: 21186	

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**AMENDMENT & RESPONSE UNDER 37 C.F.R. 1.116**

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

In response to the Final Office Action mailed June 19, 2006, please amend the application as follows:

**IN THE CLAIMS**

Please amend the claims as follows.

1. (Previously Presented) A method for managing a plurality of sources comprising:  
~~selectively determining~~ selecting an empirical measurement of a performance of each of the plurality of sources, wherein the empirical measurement is selected according to a size of data to be obtained from at least one of the plurality of sources; selecting a source in reference to the empirical measurements of the performance of each of the plurality of sources; and initiating a download of data from a download source of the plurality of sources.
2. (Cancelled)
3. (Original) The method of claim 1, wherein the determining further comprises: obtaining an empirical measurement of a throughput speed of each of the plurality of sources from a local source.
4. (Original) The method of claim 1, wherein the performance further comprises a throughput speed.
5. (Original) The method of claim 1, wherein the performance comprises latency.
6. (Previously Presented) The method of claim 5, wherein the determining the empirical measurement further comprises:  
measuring the elapsed time of a transmission involving each of the plurality of sources.

7. (Previously Presented) The method of claim 5, wherein the determining the empirical measurement further comprises for each of the plurality of sources:

recording transmission time from the current time and date;  
initiating a transmission to a download source of the plurality of sources;  
receiving a response to the transmission from the source;  
recording the receipt time from the current date and time; and  
determining the throughput speed of the source from the difference between the receipt time and the transmission time.

8. (Currently Amended) A tangible computer-accessible medium having executable instructions for managing a plurality of sources, said executable instructions capable of directing a processor to perform:

~~electively determining selecting~~ an empirical measurement of a throughput speed of each of the plurality of sources, ~~wherein the empirical measurement is selected~~ according to a size of data to be obtained from at least one of the plurality of sources;  
selecting a source in reference to the empirical measurements of the throughput speed of each of the plurality of sources; and  
initiating a download of data from a download source of the plurality of sources.

9. (Original) The medium of claim 8, wherein the throughput speed further comprises a download speed.

10. (Original) The computer-readable medium of claim 8, wherein said instruction for determining further comprises an instruction capable of directing the processor to perform:  
measuring a throughput speed of each of the plurality of sources.

11. (Original) The medium of claim 10, wherein said instruction for measuring further comprises instructions capable of directing the processor to perform for each of the plurality of sources:

recording transmission time from the current time and date;  
initiating a transmission to a download source of the plurality of sources;  
receiving a response to the transmission from the source;  
recording the receipt time from the current date and time; and  
determining the throughput speed of the source from the difference between the receipt time and the transmission time.

12.-18. (Cancelled)

19. (Previously Presented) The medium of claim 8, wherein the download source further comprises a source in a peer-to-peer network.

20. (Previously Presented) The medium of claim 8, wherein said instruction for determining further comprises instructions capable of directing the processor to perform:

recording transmission time from the current time and date;  
initiating a transmission to a download source of the plurality of sources;  
receiving a response to the transmission from the source;  
recording the receipt time from the current date and time; and  
determining the round-trip timing of the download source from the difference between the receipt time of the response and the transmission time of the transmission.

21. (Currently Amended) A computerized method for managing a plurality of sources comprising:

obtaining a list comprising a plurality of identification of sources;  
initiating a plurality of socket connections, the plurality of socket connections further comprising one socket connection for each of the plurality of sources, yielding a plurality of initiated socket connections;  
~~the initiating including selectively obtaining~~ selecting an empirical measurement of performance of each of the plurality of sources, ~~the empirical measurement selected~~ according to a predetermined file size;  
receiving a response for the each of the plurality of initiated socket connections, yielding a plurality of responses;  
selecting a source of the plurality of sources in reference to the empirical measurement of performance; and  
initiating a download of data from a download source of the plurality of sources.

22. (Original) The computerized method of claim 21, wherein the predetermined file size is less than a predetermined threshold file size and wherein the selecting further comprises:

selecting the source associated with the response that is received first.

23. (Original) The computerized method of claim 21, wherein the predetermined file size is greater than a predetermined threshold file size and wherein the selecting further comprises:

measuring the latency of each of the plurality of sources; and

selecting a source in reference to the download speed of each of the plurality of sources.

24. (Currently Amended) The computerized method of claim 23, wherein measuring the latency further comprises:

storing [[the]] a time and date of each of the plurality of initiating socket connections;  
storing the time and date of each of the plurality of responses; and  
determining the download speed of each of the plurality of sources from the differences  
in time between the time and date of each of the plurality of the responses and the  
time and date of each of the plurality of the initiating socket connections.

25. (Currently Amended) A system for managing sources in a peer-to-peer network comprising:

a processor;  
software means operative on the processor for ~~selectively determining~~ selecting an empirical measurement of a throughput speed of each of the plurality of sources, the empirical measurement selected according to a size of data to be obtained from at least one of the plurality of sources;  
the software means including obtainer means to obtain the empirical measurement of a throughput speed of each of the plurality of sources from at least one third-party source;  
the software means selecting a source in reference to the empirical measurements of the throughput speed of each of the plurality of sources and the at least one third-party source; and  
a transmitter to initiate a download of data from a download source of the plurality of sources.

26. (Original) The system of claim 25, wherein the throughput speed further comprises a round-trip time.

27. (Original) The system of claim 25, wherein the throughput speed further comprises a latency.

28. (Currently Amended) A computerized system comprising:

- a determiner of an empirical measurement of a throughput speed of each of the plurality of download peer-to-peer network sources;
- the ~~determining including selectively obtaining~~ ~~determiner operable to select~~ an empirical measurement of a throughput speed of each of the plurality of sources from at least one third-party source, ~~the empirical measurement selected~~ according to a size of data to be obtained from at least one of the plurality of download peer-to-peer network sources;
- a selector of a source in reference to the empirical measurement of the throughput speed of each of the plurality of peer-to-peer network sources and the at least one third-party source; and
- a transmitter to initiate a download of data from a download source of the plurality of peer-to-peer network sources.

29. (Previously Presented) The computerized system of claim 28, the determiner further comprising:

- a transmitter to transmit a message to a download source of the plurality of sources;
- a recorder of the time of a transmission of a message, operably coupled to the transmitter;
- a receiver of a response to the transmission from the source, operably coupled to the transmitter;
- a recorder of the time of receipt of a response; and
- a determiner of the throughput speed of the source, from the difference between the receipt time and the transmission time.

30. (Currently Amended) The computerized system of claim 28, wherein [[the]]: the message further comprises a TCP/IP synchronized idle message; and the response further comprises a TCP/IP acknowledgment message.

### **REMARKS**

This responds to the Office Action mailed on June 19, 2006.

Claims 1, 8, 21, 24, 25, 28 and 30 are amended; no claims are canceled or added; as a result, claims 1, 3-11, and 19-30 remain pending in this application. Claims 1, 8, 21, 25 and 28 were amended to clarify certain aspects of the claims. Support for the clarifying amendments may be found throughout the specification and in particular on page 11, line 10 to page 12, line 17. No new matter is believed to be introduced as a result of the amendments.

Claims 24 and 30 were amended to correct minor typographical errors. Claim 24 was amended to correct an issue with antecedent basis for the terms “time” and “date”. Claim 30 was amended to remove an extraneous “the”.

None of the amendments are in response to an art based rejection. Further, none of the amendments is believed to change the scope of the claims so no further search is believed to be required.

#### **§112 Rejection of the Claims**

Claims 1, 3-11 and 19-30 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Office Action stated that it was “selectively determining” and what was being selectively determined was unclear. Applicant has amended claims 1, 8, 21, 25 and 28 to clarify the claims. Applicant respectfully submits that the amendments overcome the rejection. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1, 3-11 and 19-30.

#### **§103 Rejection of the Claims**

Claims 1, 3-11, 19-20 and 25-29 were rejected under 35 USC § 103(a) as being unpatentable over Emens et al. (U.S. 6,606,643) in view of Ramanathan et al. (U.S. 5,913,041). Applicant respectfully traverses the rejection. In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one

of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)). Applicant respectfully submits that the claims contain elements not found in the cited references.

For example, independent claim 1 recites “selecting an empirical measurement of a performance of each of the plurality of sources, wherein the empirical measurement is selected according to a size of data to be obtained from at least one of the plurality of sources” (emphasis added). Thus claim 1 recites determining based on the size of data to be obtained which of a variety of empirical measurements to use to select a source for the data. Claims 8, 25 and 28 recite similar language related to selecting an empirical measurement. The Office Action correctly states that Emens does not teach “determining according to a size of data to be obtained.” However, the Office Action asserts that Ramanathan teaches the recited language at column 3, lines 15-17. Applicant respectfully disagrees with this interpretation of Ramanathan. The cited section of Ramanathan, and Ramanathan in general, teaches the use of “log information in a passive and non-intrusive manner to evaluate the performance of transfers to a selected subset of remote sites” (see Abstract). As is clear from the cited section and the Abstract, Ramanathan is directed to using historical data to evaluate performance. This is quite different from Applicant's claims, which uses the size of data to be obtained to determine a performance measurement to use. The selected performance measurement is then used to determine which source of the data is to be used for the download. Thus the size of the data is used to prospectively determine an empirical measurement to use. In contrast, Ramanathan discloses the use of historical data to provide performance measurements. As a result, Ramanathan does not teach or suggest selecting an empirical measurement of a performance of each of the plurality of sources, wherein the empirical measurement is selected according to a size of data to be obtained from at least one of the plurality of sources. Thus neither Emens nor Ramanathan teach or suggest each and every element of Applicant's claims 1, 8, 25 and 28. Because the combination of Emens and Ramanathan fails to teach or suggest each and every

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claim element, the combination does not render claims 1, 8, 25 and 28 obvious. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1, 8, 25 and 28.

Claims 21-24 and 30 were rejected under 35 USC § 103(a) as being unpatentable over Emens and Ramanathan in view of Andrews et al. (U.S. Publication 2002/0038360). Independent claim 21, similarly to claims 1, 8, 25 and 28 recites “selecting an empirical measurement of performance of each of the plurality of sources, the empirical measurement selected according to a predetermined file size.” As discussed above, neither Emens nor Ramanathan teach or suggest the recited language. Further, Applicant has reviewed Andrews and can find no teaching or suggestion of the recited language. As a result, the combination of Emens, Ramanathan, and Andrews fails to teach or suggest each and every element of Applicant’s claim 21. Applicant respectfully requests reconsideration and the withdrawal of the rejection.

In addition to the patentable elements provided by the dependent claims, the dependent claims are believed allowable by virtue of their dependency on an allowable base claim. Accordingly, the rejections of the dependent claims based on the combination of Emens and Ramanathan and the combination of Emens, Ramanathan and Andrews is believed overcome. The Applicants respectfully request removal of the rejections.

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TECHNIQUES TO FIND THE FASTEST SOURCE

Assignee: Intel Corporation

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***Conclusion***

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

JIM CHU ET AL.

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Date September 19, 2006

By 

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 19th day of September 2006.

Rodney L. Lacy

Name

  
Signature